IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 725 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMNIKLAL B SHULKA

Versus

UNION OF INDIA

Appearance:

MR MD RANA for Petitioner

MS PJ DAWAWALA for Respondent No. 1

MR MA BUKHARI, GOVERNMENT PLEADER for Respondent No. 2

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 06/03/2000

ORAL JUDGEMENT

#. Rule. Ms.P.J.Dawawala appears and waives service of rule on behalf of the respondent No.1 - Union of India and Mr.M.A.Bukhari,AGP appears and waives service of rule

on behalf of the respondent No.2. In the facts and circumstances of the case, this matter is taken up for final hearing today.

#. This petition is filed by the petitioner for an appropriate writ, direction or order directing the respondents authorities to grant Freedom Fighters' Pension to the petitioner who had undergone jail sentence during the Freedom Fighters' Movement. It appears that, earlier, the petitioner filed a petition, being Special Civil Application No.5142 of 1994 which came up for final hearing before a Single Judge of this Court. It was allowed by a judgment and order dated March 12, 1998 and the following order was passed.

> "...I accordingly allow this petition. Respondents shall consider the petitioner's application made on 24th June, 1985 keeping in view the advertisement dated 29th April, 1985. Necessary orders shall be made within a period of 12 weeks from the date of receipt of copy of this order. In the event the petitioner's application is rejected after scrutiny as aforesaid, the order shall be a speaking order. Rule is made absolute accordingly. There shall be no order as to costs."

#. It appears that, in pursuance of the above order, again the application was considered, but again, it was rejected on July 27, 1998 (Annexure-`G' to the petition) against which the present petition is filed.

#. Several contentions were raised by Mr.Rana, learned counsel for the petitioner. It was, however, submitted that, the policy regarding grant of Freedom Fighters' Pension was relaxed by the first respondent vide a policy decision, annexed to the petition at Annexure-A, and, hence, it must be so interpreted to extend benefits to Freedom Fighters. It was also stated that, in view of liberalised attitude, practical approach was adopted by the Government. Minimum period of detention/imprisonment was reduced. Likewise, relaxation was made regarding production of documentary evidence in support of detention/imprisonment. It was provided that if necessary documents in the form of orders passed by Government or Courts are not available, it would be open to a freedom fighter to produce certificates from other freedom fighters and on the basis of such certificates, an applicant would be entitled to pension.

#. The petitioner had forwarded certain certificates to the Central Government alongwith his application dated June 24, 1985 (Annexure-`A'). Those certificates included certificates issued by freedom fighters, viz. Vallabhbhai Patel, a Freedom Fighter and Ex-MLA and Ichhashanker Trivedi. He also annexed a certificate issued by Jaswantbhai Mehta, Ex-MLA, MP and Minister, etc. It was further stated that the jail record of old Palitana State was not available.

#. The Central Government, however, rejected the application of the petitioner vide order dated July 27, 1998 - Annexure-G inter alia observing in paragraphs 7 and 8 as under.:

7. "The certificates of freedom fighters above produced by you are not sufficient proof to substantiate your claim of sufferings, as you have not been able to produce the required documents in support of your claim as detailed in para 4 above."

8. "Since you have not submitted acceptable evidences, as per the requirements of the scheme, your claim of suffering is not proved. In absence of the requisite documents, in support of your claim, you are not eligible for grant of pension under the scheme."

In paragraph 7, reference was made to paragraph 4. Part (A) of the said paragraph refers to certificates of imprisonment or detention whereas part (B) deals with documentary evidence in the nature of Court's/ Government's orders. It was also the case of the Central Government that the State Government had not recommended the case of the petitioner and hence the decision was taken against the petitioner refusing the prayer made by him.

#. So far as the State Government is concerned, the State Government did not forward the application of the petitioner on the ground that it was not submitted within a period of limitation and no documentary evidence was produced.

#. Now, looking to the order passed by the learned Single Judge earlier, as also looking to the policy decision in the form of advertisement at Annexure-A, it is clear that the policy was liberalised from time to

time. As held by the Hon'ble Supreme Court in Mukundlal Bhandari & Ors. Vs. Union of India & Ors., AIR 1993 SC 212 and by this court in Mahendra Ashabhai Patel Vs. Union of India & Anr., 1997(4) GCD, 335 while granting benefits to Freedom Fighters under the Freedom Fighters' Pension Scheme, 1972, no period of limitation can be prescribed.

#. From the record, it is clear that the case of the petitioner was that documentary evidence in the form of jail record of old Palitana State was not available. Precisely, in these circumstances, a policy decision at Annexure-A to the petition will operate which enabled the petitioner to furnish certificates from Freedom Fighters. Now looking to the certificates issued by Vallabhbhai Patel and Ichhashanker Trivedi, it is clear that both of them were Freedom Fighters. Vallabhbhai Patel was a Freedom Fighter as well as former MLA. Even the impugned order (Annexure-G) passed by the Central Government specifically states that the certificates of freedom fighters were produced by the petitioner but according to the Central Government it could not be said to be "sufficient proof".

##. In the certificate of Majidbhai (MLA) (Annexure-`F'), it was made further clear that other Freedom Fighters were no more alive. In these circumstances, in my opinion, the petitioner has produced sufficient proof. The petition, therefore, deserves to be allowed and it is accordingly allowed. The Central Government - respondent No.1 committed clear error of law in not considering the certificates issued by Freedom Fighters in their proper perspective and by observing that the certificates produced were not "sufficient proof" to substantiate the claim.

##. For the foregoing reasons, the petition is allowed. It is directed that the Central Government will decide the matter considering the certificates issued by the Freedom Fighters submitted by the petitioner alongwith his application dated June 24, 1985 as proper and take appropriate decision in accordance with law. Since the matter pertains to Freedom Fighters' Pension Scheme, necessary and consequential action will also be taken by the Central Government as expeditiously as possible preferably within three months from the receipt of the writ. Rule is made absolute to the aforesaid extent. In the facts and circumstances of the case, there shall be no order as to costs.

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(pathan)